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EPA Says No PSD Fee System Available Despite Major GHG Permit Burden

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EPA is warning that state regulators may ultimately face a '100-fold' increase in the number of prevention of significant deterioration (PSD) permits they will need to issue under its emerging greenhouse gas (GHGs) regulatory program, which the agency points out will impose major administrative costs for which no "mitigating fee structure currently exists."

Additionally, EPA says earlier estimates by state regulators of the personnel and financial resources they will need to meet the burden of regulating GHGs likely represent "a significant understatement of the potential impacts on permitting authorities." However, it is not clear whether the agency believes that to be true only in the absence of its recently finalized "tailoring" rule, which limits GHG regulation to large, stationary emitters -- a rule many industry critics argue is highly vulnerable to a legal challenge.

While the agency notes regulators can use existing fee mechanisms for Title V operating permits to recoup the costs associated with the "huge burden" of expanding its permitting program to cover GHGs, the agency says there is no fee mechanism in place to address PSD permits, which are issued to new or expanded facilities.

A state source says the agency's finding "underscores the importance of EPA ensuring that the \$25 million that is in the FY 2011 budget [for permitting authorities] be appropriated," and argues that "states should have an opportunity to obtain more money through their permitting program." That said, "we are fully prepared to take on this new responsibility."

EPA's prediction of the permitting burden state regulators will face is included in a [Regulatory Impact Analysis](#) the agency released alongside its final "tailoring" rule, which was published June 3 in the *Federal Register*.

While the air law establishes regulatory thresholds of 100/250 tons per year (tpy) for regulated pollutants, the tailoring rule raises that threshold for GHGs to 75,000 tpy for PSD permits -- which set air pollution limits for new facilities or those that undergo major modifications -- and 100,000 tpy for Title V operating permits. The impact analysis presents the agency's official assessment of the social costs and benefits of the rule.

EPA Analysis

In its analysis, EPA says state regulators will save approximately \$21 billion in administrative costs thanks to the higher permitting thresholds in the tailoring rule; without the rule, EPA says regulators would have been required to process roughly 2 million additional Title V operating permits annually, which would have been a "huge burden to these agencies." At the same time, though, EPA notes "the economic consequences to permitting authorities of this [Title V] permitting program are offset in the fee structure these authorities are allowed to charge sources obtaining Title V permits."

While the tailoring rule postpones the burden of regulating small emitters, which EPA says "cannot feasibly be met" for at least another 5 years, many observers expect the rule will eventually be overturned by a federal court because it alters the air law regulatory thresholds established by Congress, which would lead to the permitting of thousands of additional sources of GHGs. EPA has also indicated it could lower the GHG regulatory threshold in the future.

Additionally, EPA's analysis notes that, unlike with Title V permits, no fee structure currently exists for PSD permitting, meaning regulators will need to cover their costs by relying on "current revenue sources" -- revenue sources some regulators have complained may not be available due to state budget freezes.

The agency's findings are the latest evidence of the huge resource burdens state and federal regulators are facing as they move to begin regulating GHGs in the coming years. For example, some EPA union officials and the Government Accountability Office have warned the agency lacks the resources necessary to meet the burdens that will be imposed by climate regulations and other initiatives. Top agency officials, however, are rejecting calls for EPA to conduct a

sweeping analysis of its workforce needs.

Concerns have also been raised by some state officials that EPA's Air Facility System -- a database of permitting information concerning stationary sources regulated under the air law -- could be overwhelmed by the increased workload posed by climate rules. State regulators have also warned they may have difficulties attaining the staff and financial resources they will need to issue permits for GHGs.

State Survey

The National Association of Clean Air Agencies (NACAA) in a survey of state regulators conducted last year found the average permitting authority would need an additional dozen full-time employees and \$1.1 million in new funding as a result of GHG regulation, assuming a 10-fold increase in the number of PSD permits that would need to be issued. The average time to add those employees would be two years, the survey found, though "approximately 25 percent of respondents indicated that a hiring freeze is in place and would not allow them to add new staff at this point."

The survey also found that if states were unable to add new staff or obtain additional funding, the average PSD permit -- which sets air pollution limits for facilities undergoing significant alterations -- would take a "a little less than 3 years" to be issued, "approximately three times the average current processing time." Respondents to the survey on average said they issue 8 PSD permits a year.

In its analysis of tailoring rule, however, EPA says the burden imposed on states as a result of regulating GHGs may be much larger than assumed. "Rather than the 10-fold increase in permits postulated in NACAA's survey, EPA estimates the increase would more likely be 100-fold," the analysis states, "making these estimates a significant understatement of the potential impacts on permitting authorities." A spokeswoman for EPA suggests the language refers to the burden regulators would face in the absence of the tailoring rule.

The state source downplays the significance of EPA's assessment, declaring the analysis and NACAA's own survey to both be "directionally correct" in finding the burden of regulating GHGs "would be far more significant than what the agency developed initially."

In addition to estimating the burden of issuing PSD permits, the EPA analysis also predicts potential savings, estimating that raising the regulatory threshold for GHGs under the air law will result in \$193.6 billion in "regulatory relief benefits" from January 2011 to July 2013. And while there "will be some costs to society during this time from the potential loss of GHG emission reductions from small sources that could occur," the analysis says EPA was "not able to quantify or monetize these potential foregone emission reductions." -- *Charles Davis*

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